IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Revision No.129 of 2005.

Date of decision: 7.6.2006.

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Raj Kumar and others ….petitioners.

-Versus-

Ajay Kumar and others ….Respondents

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Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting? No.

For the Petitioners: Mr.C.B.Singh, Advocate.

For Respondents: Mr.Ajay Sharma, counsel for respondent No.1.

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**Deepak Gupta, J.(Oral)**

The present petitioners (hereinafter referred to as the plaintiffs) filed a suit for specific performance of the contract. It was alleged by them that the respondents 2 to 5 had entered into an agreement with them on 10.11.2000 whereby they had agreed to sell the suit property in favour of the plaintiffs for a total consideration of Rs.two lakhs. It was further alleged by them that as per the terms of the agreement the sale deed was to be executed on or before 30th July, 2004. In the meantime, the respondents 2 to 5 sold the suit land to respondent No.1 for a sale consideration of Rs.80,000/- on 29th May, 2004. The plaintiffs allege that this sale is a fraud sale to get out of the agreement entered into with them.

Alongwith the suit the plaintiffs had filed an application for grant of stay. This was rejected by the learned trial Court. An

appeal was filed which has been dismissed by the learned Additional District Judge (1), Kangra at Dharamshala. Aggrieved against the same the plaintiffs have filed the present Revision Petition and pray that pending disposal of the legal proceedings the respondents be restrained from changing the nature of the land or encumbering the same.

Both the Courts below have considered the entire matter and have come to the conclusion that the sale deed has been executed in favour of respondent No.1 who has been put in possession of the suit land. The Courts below have also held that even if the plaintiffs succeed they can be compensated in terms of the money. The respondent No.1 has also filed an affidavit to the effect that in case the plaintiffs succeed they may be handed over the suit land alongwith the structure raised by him on the suit land pending disposal of the case and he shall not even claim compensation in respect of that structure. The defendants have further alleged that the plaintiffs have forged the agreement to sell. According to them the date by which this sale deed was to be executed was 30.1.2001 and by alteration and inter-polation the plaintiffs have forged this dated to 30.7.2004. The plaintiffs have not filed the original agreement but have stated that the original agreement was stolen and have filed photocopy of the same. At this stage it would not be appropriate to go into the merits of the contention as to whether the dates have been forged or not. However, from the record of the deed writer who had scribed the agreement to sell which has been summoned by the trial Court it is apparent that the sale deed was to be executed by

30.1.2001. The suit has been filed in the year 2004. The relief of specific performance is a discretionary relief which can be refused even if the plaintiff proves that the agreement was executed.

In the present case keeping in view all the facts and circumstances especially the dispute with regard to the date by which the sale deed was to be executed and also the fact that the land in question has been sold to respondent No.1 by respondents 2 to 5, I feel that no interference is called for. There is no jurisdictional error in the orders of both the Courts below. As such, there is no merit in the Revision Petition which is dismissed. No costs.

June 7, 2006. **( Deepak Gupta ),**
PV **Judge**